

INFORMATION SHEET
 DETERMINATIONS OF NO JURISDICTION FOR ISOLATED, NON-NAVIGABLE, INTRA-STATE WATERS RESULTING
 FROM U.S. SUPREME COURT DECISION IN SOLID WASTE AGENCY OF NORTHERN COOK COUNTY
 V. U.S. ARMY CORPS OF ENGINEERS

DISTRICT OFFICE: Philadelphia

FILE NUMBER: CENAP-OP-R-200501109

REGULATORY PROJECT MANAGER: Lawrence M. Slavitter Date: March 10, 2006

PROJECT REVIEW/DETERMINATION COMPLETED: In the office N (Y/N) Date: _____
 At the project site Y (Y/N) Date: September 26, 2005

PROJECT LOCATION INFORMATION:

State: Pennsylvania
 County: Berks

Center coordinates of site by latitude & longitudinal coordinates: 40-17-57 N/75-47-54 W

Approximate size of site/property (including uplands & in acres): 39

Name of waterway or watershed: Delaware River

SITE CONDITIONS:

Type of aquatic resource ¹	0-1 ac	1-3 ac	3-5 ac	5-10 ac	10-25 ac	25-50 ac	> 50 ac	Linear feet	Unknown
Lake	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
River	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stream	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Dry Wash	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mudflat	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sandflat	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Wetlands	<input checked="" type="checkbox"/> 0.09	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Slough	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Prairie pothole	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Wet meadow	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Playa lake	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vernal pool	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Natural pond	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other water (identify type)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

¹Check appropriate boxes that best describe type of isolated, non-navigable, intra-state water present and best estimate for size of non-jurisdictional aquatic resource area.

Migratory Bird Rule Factors ¹ :	If Known		If Unknown Use Best Professional Judgment		
	Yes	No	Predicted to Occur	Not Expected to Occur	Not Able To Make Determination
Is or would be used as habitat for birds protected by Migratory Bird Treaties?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Is or would be used as habitat by other migratory birds that cross state lines?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Is or would be used as habitat for endangered species?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Is used to irrigate crops sold in interstate commerce?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

¹Check appropriate boxes that best describe potential for applicability of the Migratory Bird Rule to apply to onsite, non-jurisdictional, isolated, non-navigable, intra-state aquatic resource area.

TYPE OF DETERMINATION: Preliminary ☐ Or Approved ☒ .

ADDITIONAL INFORMATION SUPPORTING NJD (e.g., paragraph 1 – site conditions; paragraphs 2-3 – rationale used to determine NJD, including information reviewed to assess potential navigation or interstate commerce connections; and paragraph 4 – site information on waters of the U.S. occurring onsite):

Site Conditions:

The property is a 39 acre (gross) tract identified as Tax Map Number 53451842, Parcel 1306, located at the northwest corner of State Route 422 and Daniel Boone Road, in Exeter Township, Berks County, Pennsylvania. The site contains forested uplands with 4 watercourses and emergent wetlands. Adjacent properties consist primarily of undeveloped forested areas and a commercial business. There is an isolated wetland located on the subject property.

Rationale for Determination:

1. The wetland is too small, and does not contain enough standing water to support any type of watercraft and is therefore non-navigable in fact.
2. An isolated 0.089 acre scrub/shrub wetland was identified on the property. The closest water of the United States to the wetland is a tributary to Monocacy Creek that lies approximately 400 feet to the northwest. It is the opinion of the project manager that the wetland developed after the area was excavated for construction activities in the area. Hydrology is supplied from run-off from the adjacent road; however, this run-off is not from a point source. Given the distance to this watercourse, the wetland is too far from the watercourse to be a neighboring wetland. In accordance with 33 CFR 328.3 (c), the wetland is not adjacent to a water of the US, but rather it is isolated.
 - a. The wetland was evaluated for a nexus to interstate or foreign commerce as follows: The small size of the wetland and the lack of any unusual properties make it unlikely that the wetland could be used for recreational, educational, or scientific use by interstate or foreign travelers (33 CFR 328.3 (a)(3)(i)). The wetland does not support fish or shellfish; the wetland does not contain sufficient water to irrigate crops or for use in industrial or commercial processes (33 CFR 328.3 (a) (3) (ii)). The wetland does not contain merchantable timber, there are no known mineral deposits, and the areas do not contain sand or gravel deposits that could be taken and sold in interstate or foreign commerce (33 CFR 328.3 (a)(3)(iii)).
 - b. Based upon the factors considered above, the wetland is an isolated, intrastate wetland with no nexus to interstate or foreign commerce. As such, pursuant to 33 CFR 328.3, the wetland is not a water of the United States, and is not subject to Section 404 of the CWA.

Waters of the United States:

There are four watercourses at the project site. The watercourses commence on the subject property, then flow off the property. The waters from these watercourses flow off site into Molasses Creek, which flows into the Monocacy Creek, which flows into the Schuylkill River, which flows into the Delaware River. The Delaware River is a navigable, interstate water of the United States per 33 CFR 329 and 33 CFR 328.3(a)(1). As such, the watercourses on the subject property are considered regulated by this office per 33 CFR 328.3 (a)(5). There are wetlands that are located contiguous to three of the watercourses on the subject property. As such, the wetlands located on the subject property are considered regulated by this office per 33 CFR 328.3 (a)(7).